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covered by the report and the accounting principles and practices reflected therein; and

(2) the opinion of the accountant as to the consistency of the application of the accounting principles, or as to any changes in such principles which have a material effect on the financial statements.

(d) *Exceptions.* Any matters to which the accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated, and, to the extent practicable, the effect of each such exception on the related financial statements given. (See section 101 of the Codification of Financial Reporting Policies.)

(e) Paragraph (e) of this section applies only to registrants that are providing financial statements in a filing for a period with respect to which Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP ("Andersen") issued an accountants' report. Notwithstanding any other Commission rule or regulation, a registrant that cannot obtain an accountants' report that meets the technical requirements of paragraph (a) of this section after reasonable efforts may include in the document a copy of the latest signed and dated accountants' report issued by Andersen for such period in satisfaction of that requirement, if prominent disclosure that the report is a copy of the previously issued Andersen accountants' report and that the report has not been reissued by Andersen is set forth on such copy.

[37 FR 14594, July 21, 1972, as amended at 41 FR 35479, Aug. 23, 1976; 45 FR 63668, Sept. 25, 1980; 50 FR 25215, June 18, 1985; 67 FR 13533, Mar. 22, 2002]

§ 210.2-03 Examination of financial statements by foreign government auditors.

Notwithstanding any requirements as to examination by independent accountants, the financial statements of any foreign governmental agency may be examined by the regular and customary auditing staff of the respective government if public financial statements of such governmental agency are customarily examined by such auditing staff.

§ 210.2-04 Examination of financial statements of persons other than the registrant.

If a registrant is required to file financial statements of any other person, such statements need not be examined if examination of such statements would not be required if such person were itself a registrant.

§ 210.2-05 Examination of financial statements by more than one accountant.

If, with respect to the examination of the financial statements, part of the examination is made by an independent accountant other than the principal accountant and the principal accountant elects to place reliance on the work of the other accountant and makes reference to that effect in his report, the separate report of the other accountant shall be filed. However, notwithstanding the provisions of this section, reports of other accountants which may otherwise be required in filings need not be presented in annual reports to security holders furnished pursuant to the proxy and information statement rules under the Securities Exchange Act of 1934 [§§ 240.14a-3 and 240.14c-3].

[46 FR 40872, Aug. 13, 1981]

GENERAL INSTRUCTIONS AS TO FINANCIAL STATEMENTS

SOURCE: Sections 210.3-01 to 210.3-16 appear at 45 FR 63687, Sept. 25, 1980, unless otherwise noted.

NOTE: These instructions specify the balance sheets and statements of income and cash flows to be included in disclosure documents prepared in accordance with Regulation S-X. Other portions of Regulation S-X govern the examination, form and content of such financial statements, including the basis of consolidation and the schedules to be filed. The financial statements described below shall be audited unless otherwise indicated.

For filings under the Securities Act of 1933, attention is directed to § 230.411(b) regarding incorporation by reference to financial statements and to section 10(a)(3) of the Act regarding information required in the prospectus.

For filings under the Securities Exchange Act of 1934, attention is directed to § 240.12b-23 regarding incorporation by reference and

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§240.12b-36 regarding use of financial statements filed under other acts.

[45 FR 63687, Sept. 25, 1980, as amended at 57 FR 45292, Oct. 1, 1992]

TEMPORARY NOTE 1T: Notwithstanding any other Commission rule or regulation, every registrant meeting the eligibility requirements in paragraph (a) of this note that files a registration statement on Forms S-1, S-2, S-3, S-4, S-6, S-8, S-11, N-1, N-1A, N-2, N-3, N-4, N-5 or N-14 (§§239.11, 239.12, 239.13, 239.25, 239.16, 239.16b, 239.18, 239.15, 239.15A, 239.14, 239.17a, 239.17b, 239.24 or 239.23 of this chapter), or an amendment thereto, that requires audited financial statements for the most recent fiscal year end may file unaudited financial statements in satisfaction of that requirement under the conditions listed in paragraph (b) of this note. In the case of a registered investment company that files a new registration statement on Form S-6 other than an insurance company separate account, however, the relief provided by this note shall not extend to financial statements of the registered investment company itself.

(a) *Eligibility requirements.* An issuer:

(1) That at the time of filing a registration statement is subject to the periodic reporting requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§78m(a) or 78o(d)) or, in the case of a registered investment company, has previously filed a registration statement under the Securities Act of 1933 (15 U.S.C. §77a *et seq.*) that has been declared effective by the Commission;

(2) Whose registration statement will include financial statements:

(i) Of an entity that has a fiscal year ending between and including:

(A) November 30, 2001 and April 15, 2002, if the entity meets all of the conditions in Rule 3-01(c) of Regulation S-X (§210.3-01(c)) (or Item 310(g) of Regulation S-B (§228.310(g) of this chapter) if the entity is a small business issuer) (or if the entity is a depositor for a registered unit investment trust and the entity is not subject to the periodic reporting requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§78m(a) or 78o(d))) and is not a registered investment company;

(B) December 29, 2001 and April 15, 2002, if the entity does not meet all of the conditions in Rule 3-01(c) of Regulation S-X (§210.3-01(c)) (or Item 310(g) of Regulation S-B (§228.310(g) of this chapter) if the entity is a small business issuer) and is not a registered investment company; or

(C) January 1, 2002 and April 15, 2002 in the case of a registered investment company;

(ii) As to the examination of which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant on or after March 14, 2002;

(3) That, on or before March 14, 2002, had not obtained a manually signed audit report from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) in respect of those financial statements;

(4) That is unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) or elects not to have Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) issue a manually signed audit report in respect of those financial statements; and

(5) That is not a “blank check company” as defined in §230.419(a)(2) of this chapter.

(b) *Conditions.*

(1) The issuer’s registration statement responds to all items required by the applicable registration form, but with unaudited financial statements that meet the timeliness requirements of Rule 3-01 of Regulation S-X (§210.3-01) or, for a registered investment company, Rules 3-12 and 3-18 of Regulation S-X (§§210.3-12 and 210.3-18) for those financial statements as to the examination of which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant.

(2) The issuer provides in the registration statement disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S-X (§§210.3-01—3-20).

(3) If the registration statement is not yet effective and it will become effective on or after the date specified in paragraph (b)(4) of this section, the issuer must file a pre-effective amendment or an amendment to a document incorporated by reference, as appropriate, before effectiveness. If the registration statement is effective, the issuer must file either a post-effective amendment or an amendment to a document incorporated by reference, as appropriate, not later than the date specified in paragraph (b)(4) of this note; provided that this filing or amendment need not be made if the offering or offerings have been completed (and any prospectus delivery period under Section 4(3) of the Securities Act of 1933 (15 U.S.C. §77d(3)) and the rules thereunder has expired) prior to the date specified in paragraph (b)(4) of this note. The filing or amendment shall present:

(i) The financial statements audited by an independent public accountant other than Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP);

(ii) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant to examine the issuer’s financial statements, selected financial data required by Item 301 of Regulation S-K (§229.301 of this chapter) based on the audited financial statements; (iii) A discussion of any material changes from the unaudited financial statements filed originally; and

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(iv) Any other section of the registration statement or documents incorporated by reference that should be updated or revised to reflect the changes in the financial statements so filed by amendment.

(4) For purposes of paragraph (b)(3) of this note:

(i) If the issuer (other than a registered investment company) meets all of the conditions in Rule 3-01(c) of Regulation S-X (§ 210.3-01(c)), the date shall be the earlier of:

(A) 60 days from the date the audited financial statements were required to be included in the registration statement; and

(B) The date on which an amended Form 10-K or 10-KSB (§ 249.310 or 249.310b of this chapter) containing audited financial statements is filed in accordance with Release No. 34-45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov);

(ii) If the issuer (other than a registered investment company) does not meet all of the conditions in Rule 3-01(c) of Regulation S-X (§ 210.3-01(c)), the date shall be the earlier of:

(A) 106 days from the date the audited financial statements were required to be included in the registration statement; and

(B) The date on which an amended Form 10-K or 10-KSB containing audited financial statements is filed in accordance with Release No. 34-45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov); and

(iii) If the issuer is a registered investment company, the date shall be the earlier of:

(A) 6 months after the close of the fiscal year of the issuer; and

(B) The date on which an amended annual report to shareholders containing audited financial statements is filed in accordance with Release No. IC-25463 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov).

(c) This temporary note will expire on December 31, 2002.

TEMPORARY NOTE 2T: (a) This temporary note applies to any issuer that provides unaudited financial statements in a filing in reliance on Release No. 34-45589 (March 18, 2002) or Release Nos. IA-2017 and IC-25463 (March 18, 2002) (each of which may be viewed on the Commission's website at www.sec.gov) or a temporary rule adopted in Release 33-8070 (March 18, 2002) published on March 22, 2002, in the FEDERAL REGISTER. The guidance provided by this note is intended to assist issuers in meeting their disclosure obligations under the federal securities laws. The exact content of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Arthur Andersen LLP's (or a foreign affiliate of Arthur Andersen LLP's) former public company audit clients. To the extent this note requires disclosure on the cover page of a filing, if the subject filing does not have a

cover page, present this information as a preface to the disclosure presented in response to the form.

(b) The issuers for which this temporary note applies must provide on the cover page of their filings a prominent statement that the filing includes unaudited financial statements in lieu of audited financial statements because the issuer was unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) or elected not to have Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) issue a manually signed audit report in respect of those financial statements and a cross-reference to additional information contained in the filing.

(c) The issuer for which this temporary note applies also shall provide the prominent statement referred to in paragraph (b) of this note in the filing immediately before the financial statements and shall also disclose:

(1) A statement as to when and how the issuer intends to provide the audited financial statements; and

(2) A statement that no auditor has opined that the unaudited financial statements present fairly, in all material respects, the financial position, the results of operations, cash flows and the changes in shareholders' equity of the company (and, in the case of a registered investment company, the financial highlights) for each of the periods reported in accordance with generally accepted accounting principles.

(d) Further, any audit report previously issued by Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) that is required to be included in a filing should be included as required.

(e) This temporary note will expire on December 31, 2002.

TEMPORARY NOTE 3T: (a) This temporary note applies to any issuer that provides audited financial statements with an accountant's report issued by Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP ("Andersen") after March 14, 2002 in a filing. The exact content of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's public company audit clients.

(b) The issuers for which this temporary note applies must include as an exhibit (under Exhibit 99) to their filing a letter by the issuer addressed to the Commission that states that Andersen has represented to the issuer that the audit was subject to Andersen's quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards and that there was appropriate continuity of Andersen personnel working on audits, availability of national

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office consultation and availability of personnel at foreign affiliates of Andersen to conduct the relevant portions of the audit.

(c) This temporary note will expire on December 31, 2002.

[67 FR 13533, Mar. 22, 2002]

EFFECTIVE DATE NOTE: At 67 FR 13533, Mar. 22, 2002, Temporary Notes 1T, 2T and 3T were added effective Mar. 18, 2002 through December 31, 2002.

§210.3-01 Consolidated balance sheets.

(a) There shall be filed, for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years. If the registrant has been in existence for less than one fiscal year, there shall be filed an audited balance sheet as of a date within 135 days of the date of filing the registration statement.

(b) If the filing, other than a filing on Form 10-K and Form 10-KSB or Form 10 and Form 10-SB, is made within 45 days after the end of the registrant's fiscal year and audited financial statements for the most recent fiscal year are not available, the balance sheets may be as of the end of the two preceding fiscal years and the filing shall include an additional balance sheet as of an interim date at least as current as the end of the registrant's third fiscal quarter of the most recently completed fiscal year.

(c) The instruction in paragraph (b) is also applicable to filings, other than on Form 10-K and Form 10-KSB or Form 10 and Form 10-SB, made after 45 days but within 90 days of the end of the registrant's fiscal year: *Provided*, That the following conditions are met:

(1) The registrant files annual, quarterly and other reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 and all reports due have been filed;

(2) For the most recent fiscal year for which audited financial statements are not yet available the registrant reasonably and in good faith expects to report income, after taxes but before extraordinary items and cumulative effect of a change in accounting principle; and

(3) For at least one of the two fiscal years immediately preceding the most recent fiscal year the registrant reported income, after taxes by before ex-

traordinary items and cumulative effect of a change in accounting principle.

(d) For filings made after 45 days but within 90 days of the end of the registrant's fiscal year where the conditions set forth in paragraph (c) of this section are not met, the filing must include the audited balance sheets required by paragraph (a) of this section.

(e) For filings made after 134 days subsequent to the end of the registrant's most recent fiscal year the filing shall also include a balance sheet as of an interim date within 135 days of the date of filing.

(f) Any interim balance sheet provided in accordance with the requirements of this section may be unaudited and need not be presented in greater detail than is required by §210.10-01. Notwithstanding the requirements of this section, the most recent interim balance sheet included in a filing shall be at least as current as the most recent balance sheet filed with the Commission on Form 10-Q and Form 10-QSB.

(g) For filings by registered management investment companies, the requirements of §210.3-18 shall apply in lieu of the requirements of this section.

(h) Any foreign private issuer, other than a registered management investment company or an employee plan, may file the financial statements required by Item 8.A of Form 20-F (§249.220 of this chapter) in lieu of the financial statements specified in this rule.

[45 FR 63687, Sept. 25, 1980, as amended at 46 FR 12491, Feb. 17, 1981; 46 FR 36124, July 14, 1981; 50 FR 49531, Dec. 3, 1985; 56 FR 30053, July 1, 1991; 64 FR 53908, Oct. 5, 1999]

§210.3-02 Consolidated statements of income and changes in financial positions.

(a) There shall be filed, for the registrant and its subsidiaries consolidated and for its predecessors, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed or such shorter period as the registrant (including predecessors) has been in existence.